

REMARKS

Claims 18-30 are pending. Claim 18 has been amended to improve typography, grammar, and clarity.

Claim 18 stands rejected under 35 U.S.C. § 112, second paragraph based on indefiniteness. Claim 18 has been amended to address this concern. Claim 18 as amended is believed to be in compliance with 35 U.S.C. §112.

Claims 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, and 30 stand rejected under 35 U.S.C. § 101 based on double patenting of claims 1, 3, 5, 7, 8, 9, 22, 23, 24, 25, and 26, respectively, of U.S. Application No. 10/239,764, which issued as U.S. Patent No. 6,787,767 to Kato on September 7, 2004. Applicant respectfully requests reconsideration of the rejection.

Claim 18 recites, *inter alia*, a mass analyzing method which includes a third step of applying a supplementary AC voltage having a plurality of frequency components between the end cap electrodes, and scanning the main high frequency voltage. Claim 1 of Kato '767 (the '764 application) does not recite a third step that includes scanning the main high frequency voltage. Instead, claim 1 of Kato '767 recites a third step that includes scanning the frequency components of the supplementary AC voltage.

A statutory double-patenting rejection is appropriate when the same invention is being claimed twice. MPEP §804(II)(A). Applicant respectfully submits that claim 18 of the present application does not claim the same invention as recited in the claims of Kato '767. Accordingly, withdrawal of the statutory double-patenting rejection against claim 18 is solicited. Claims 19-30 depend from claim 18, and are patentable for at least the same reasons.

Claims 21 and 24 stand rejected based on nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of Kato '767 in view of U.S. Pat. No. 5,451,782 to Kelley. As noted above, however, claims 21 and 24 depend from claim 1 and consequently are allowable over Kato '767. Kelley has not been cited against claim 1, and in any event does not cure the deficiencies of Kato '767.

In view of the above, the application is considered to be in condition for allowance. Prompt issuance is solicited.

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Respectfully submitted,

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